

REMARKS

The invention provides for *inter alia* herbicidal compositions comprising at least one post-emergence herbicide and a carrier material from the group consisting of aerogels, high molecular-weight polyglycols and polymers based on acrylic acid, for pre-emergence application, i.e. prior to the emergence of the undesirable harmful plants.

The Examiner is thanked for the indication that claim 16 would be allowed if placed in independent form.

It is believed that no further fee is required for consideration of this Amendment. If, however, an additional fee is due, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account 50-0320.

Claims 14, 15 and 17 are pending. This Amendment corrects minor typographical errors to claims 14 and 15 and rewrites claim 16 in independent form as new claim 18. As these changes do not narrow the scope of the claimed subject matter, the doctrine of equivalents is not affected.

Claims 14, 15 and 17 are rejected under 35 U.S.C. §102(a) for allegedly being anticipated by Narayanan et al. (U.S. 5,231,070, "Narayanan") and Sanders et al. (U.S. 5,635,447, "Sanders"). Since neither Narayanan nor Sanders teaches or enables the use of post-emergence herbicides in the pre-emergence application, the references cannot anticipate the present claims and the withdrawal of the rejection is requested.

The Examiner is respectfully reminded that a two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). A reference contains an enabling disclosure if a person

of ordinary skill in the art could have combined the description of the invention in the prior art reference with his own knowledge of the art to have placed himself in possession of the invention. *See In re Donohue*, 226, U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Against this background, Applicants urge that Narayanan describes herbicidal compositions for leach control comprising post-emergence or pre-emergence herbicides (column 4, lines 27-36) and lactam-containing polymer. However, regardless of the presence of lactam-containing polymer, the pre-emergence herbicides are taught only for use in the pre-emergence application and the post-emergence herbicides are taught only for the use in the post-emergence application. Narayanan does not teach that if one skilled in the art formulates a post-emergence herbicide with certain auxiliaries, the herbicide may be applied pre-emergently. Hence, Narayanan cannot anticipate the present claims as it does not teach or enable one skilled in the art the use of post-emergence herbicides in the pre-emergence method. Thus, as Narayanan does not meet each and every element of the invention as claimed, it cannot anticipate the present invention.

For similar reasons it is urged that Sanders cannot anticipate the present claims. Sanders teaches "herbicidal composition comprising a herbicide and a polyorganic acid wherein said composition enhances the effectiveness of certain herbicides" (column 1, lines 34 to 36). Although Sanders discloses several classes of types of herbicides (column 1, lines 21 to 25) and several single herbicides (column 1, lines 18 to 20), it clearly relates to the use of post-emergence herbicides in a post-emergence manner and the use of the pre-emergence herbicides in a pre-emergence manner. As with Narayanan, Sanders does not teach that by combining a post-emergence herbicide with certain auxiliaries, one can apply the herbicide pre-emergently. Hence, Sanders does not teach and enable the use of post-emergence herbicides in the pre-emergence application and thus cannot anticipate the present invention.

In view of the foregoing, reconsideration and withdrawal of the Section 102 rejection are respectfully requested.

Favorable action is earnestly solicited.

Respectfully submitted,

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